Supreme Court, U.S.
FILED
05-34 APR 25 2005
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT of the UNITED STATES

LEO ROGERS DUGAS

Petitioner

V.

BILL PARKER

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

This writ of certiorari addresses what appears to be a complete breakdown of the judicial process, just because a judge acted without his jurisdiction and was sued, your petitioner respectfully submits the following questions for this Court's determination in this his writ of certiorari:

1. Whether the Fifth Circuit and the United States District Court violated your petitioner's right **to due process** under the Fifth Amendment of the U.S. Constitution, e.g. *Marshall v. Jerrico, Inc.*, 446 U.S. 238, 243 (1980)?

2. Whether respondent acted in "clear absence of all jurisdiction", e.g. *Bradley v. Fisher,* 13 Wall. 335, 351. Pp. 355-357, *Stump v. Sparkman,* 435 U.S. 349, 349-350 (1978)?

3. Whether the doctrine of **vertical stare decisis** barred the lower courts from ignoring earlier case(s) of this Court, *Hutto v. Davis,* 454 U.S. 370, 376 (1982), in ruling to dismiss petitioner's suit and appeal?

4. Whether the Fifth Circuit's and the District Court's monetary sanctions against your petitioner was justified, and their impeding petitioner's access to the courts of the United States constitutional?

LIST OF PARTIES

The parties to this case besides your petitioner are as follows:

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PETITION FOR WRIT OF CERTIORARI

Petitioner, Leo Rogers Dugas, pro se, respectfully petitions this Court for a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit.

OPINIONS BELOW

The opinion of the Fifth Circuit is unpublished and is reproduced in Appendix A herein.

JURISDICTION

This Court has jurisdiction to hear this Petition for Writ of Certiorari pursuant to Title 28 U.S.C. § 1254(1). Where, the date of the Fifth Circuit's ruling is dated February 10, 2005 and this petition has been filed within the 90 days as described by 28 U.S.C. § 2101(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1. The **Fifth Amendment** states in relevant part that "No person shall be ...deprived of life, liberty or property, without due process of the law."
2. **Title 28 U.S.C. § 2106**: The Supreme Court or any other court of appellate jurisdiction may affirm, modify, vacate, set aside or reverse any judgment, decree, or order of a court lawfully brought before it for review, and may remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances.

3. **Bankruptcy Rules of Appellant Procedure, Rule 8013:** On appeal the district court or bankruptcy appellant panel may affirm, modify, or reverse a bankruptcy judge's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact, whether based on oral or documentary evidence, shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witness.

4. **Federal Rules of Civil Procedure Rule 60:** **(b) Mistakes, Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc.** ...(4) the judgment is void.

STATEMENT OF THE CASE

On January 27, 1997, your petitioner received his order of discharge. However, an appeal had been filed during petitioner's bankruptcy case and on March 03, 1999 the Fifth Circuit issued its mandate, **(App. C).** Thereafter, the **respondent,** a bankruptcy judge, *sua sponte* reopened petitioner's bankruptcy case and set a **hearing** date and at this scheduled hearing defendant Claron Corporation failed to appear.

Some 18 months after this **hearing** your petitioner moved the district court, via mandamus, to move the bankruptcy court to issue its determination from the **hearing**, and before the district court ruled the bankruptcy court (respondent) on August 24 2001 issued its decision as directed by the Fifth Circuit's mandate. Defendant Claron chose not to move for a new trial, but opted to appeal and file a Rule 60(b) motion.

After defendant Claron perfected its appeal the bankruptcy court (respondent sitting as the judge) held a hearing to determine Claron's Rule 60(b) motion **(App. D, page 1-2)**. Wherein the bankruptcy court (respondent) ignored the rulings of the Fifth Circuit, in that, it was the **continuation** of the action in state court by Claron that violated the petitioner's *automatic stay* **(App. C, page 10)**. But, the bankruptcy court's (respondent) focus was rather, if, (1) petitioner would in fact prevail in the yet uncompleted remanded **(App. C, page 5)** state court action, and (2) what import was petitioner's stock in the defunct corporation (which generated the funds held in the registry of the court) were named in the remanded cases.

Thereafter, Claron moved the district court to remand the case to the bankruptcy court (respondent) **(App. C, Page 1-2)**. Petitioner filed his motion to dismiss Claron's appeal where Claron (1) failed to appear at the first trial and therefore there was no trial error Claron could complain of on appeal, (2) failed to obtain a **supersedes bond** from the money judgment, and (3) petitioner filed in another district court a certified copy of the August 24, 2001 money judgment pursuant to 28 U.S.C. § 1964.

The district court determining Claron's appeal viewed Claron's motion to remand "...as a motion to voluntarily dismiss appeal" and issued its *Order Dismissing Bankruptcy Appeal*. Claron acquiesced to the dismissal order **(App. B)** and **chose not to appeal** it. However, some 90 days later respondent issued his order **(App. D)**. Its this order, petitioner asserts was done without any jurisdiction **absent remand** and vacated the August 24, 2001 money judgment, being the personal property of petitioner.

Petitioner appealed the **Order** granting Claron's Rule 60(b) motion as being void. The district court ruled against your petitioner **(App. E)** and this case is now before this Court docket No. 04-1180. Petitioner sued respondent in state court and respondent removed this suit to federal court. This suit was dismissed and your petitioner was sanctioned. Thereafter, petitioner timely filed an appeal to the Fifth Circuit and the Fifth Circuit upheld the district court's decision(s) and sanctioned petitioner **(App. A, pages 1-4)**. Your petitioner has now timely filed this, his, writ of certiorari to address the issues set forth herein.

A. Factual Background

The district court **(App. B, page 1-2)**, sitting in its appellant role, ruled that:

> "...the Court is of the opinion that the appeal should be dismissed." and
> "...that Claron Corporation's appeal from the bankruptcy court is hereby **Dismissed." (App. B, page 1-2).**

Nowhere in the **(App. B)** ORDER DISMISSING BANKRUPTCY APPEAL does the district court direct the bankruptcy court (respondent) to go forward with the granting of Claron's Rule 60(b) motion. A closer look at the ORDER DISMISSING BANKRUPTCY APPEAL **(App. B, page 1-2)** shows that petitioner's *Motion to Dismiss Appeal* was considered and did affect the outcome of Claron's appeal, a fact ignored by respondent.

Where, **if in fact,** the district court's intent in issuing the ORDER DISMISSING BANKRUPTCY APPEAL was that of **a remand,** as postulated by respondent, then it must be said that petitioner's *Motion to Dismiss* would have been denied and as can be seen in **Appendix B**, it was not.

Thereafter, respondent issued his *ORDER GRANTING AMENDED MOTION OF CLARON CORPORATION FOR RELIEF FROM JUDGMENT PURSUANT TO BANKRUPTCY RULE 9024 FOLLOWING DISMISSAL OF APPEAL BY DISTRICT COURT* ("the Order" App. D), the Fifth Circuit references "the Order" in its Case No. 04-40625, see page one of **Appendix A** attached hereto.

Giving the fact that remand was sought by appellant Claron and never granted (where district court viewed motion for remand as one to voluntary dismiss appeal) **(App. B)**. It was United States District Judge Clark's attempt to vitiate this unappealed order **(App. E)** that petitioner requested recusal of Judge Clark in the case now before this Court. Where, jurisdiction over the issues Claron placed before Judge Heartfield **(App. B)** were now *res judicata* to Judge Clark, a fact Judge Clark ignored. It was not an adverse ruling against petitioner that prompted in the motion for the recusal of Judge Clark

Petitioner filed Case No. 04-40508 just before filing Case No. 04-40625 in the Fifth Circuit (now before this Court). On October 19, 2004 the Fifth Circuit denied petitioner's appeal and is now before this Court docket number 04-1180. The Fifth Circuit in Case No. 04-40508 stated "The Dugases are cautioned that filing additional frivolous motions, suits, or appeals may result in the imposition of sanctions."

The Fifth Circuit in Case No. 04-40625 sanctioned your petitioner $500 **(App. A, page 3)** and stated:

> "This court has previously warned Dugas that he could be sanctioned if he persisted in filing frivolous motions, suits, or appeals. Because Dugas did not heed this warning, he is ORDERED to pay a sanction in the amount of $500, payable to the Clerk of this Court."

Because, Case No. 04-40508, which issued this above stated warning, **had already been filed**, the Fifth Circuit erred in its imposition of monetary and filing sanctions, a fact ignored by the Fifth Circuit. This sanction ruling deprived petitioner of filing an *en banc* motion, as petitioner reasoned he would be further sanctioned by the panel of Reavley, Jolly and Higginbotham, Circuit Judges.

The only possible reason that petitioner's appeal was dismissed was that this Panel viewed Appendix B as an order of remand. Given the supervisory role over the inferior courts, your petitioner asks this Court to correct what the inferior courts have created and allow *the due process* guaranteed your petitioner by the Fifth Amendment of the Constitution to be fulfilled.

REASONS FOR GRANTING THE PETITION

I. The Fifth Circuit has so departed from the accepted and usual course of judicial proceedings in its ruling, Appendix A, as to leave an appearance of judicial prejudice against petitioner for allowing the following to stand by this ruling:

The crux of this writ of certiorari and the actions below was that respondent acted without any jurisdiction whatsoever and under the color of his office in issuing **Appendix D** where respondent:

1. Issued this Order post-dismissal of an appeal **Appendix B,** wherein **Appendix B** gave no instructions to respondent for further proceedings.

2. Acted without any rule, statue or law in allowing Claron to raise any issue in second trial (rule 60(b)), that could or should have been raised at first trial, where Claron failed to appear at the first trial and respondent denied petitioner's motion for default judgment against Claron for failing to attend first trial.

3. Failed to adhere to the mandate of the Fifth Circuit from Case No. 98-40079, **Appendix B** being "the law of the case".

4. Post-discharge, respondent had no jurisdiction over petitioner, nor his property, where, petitioner had listed the causes of actions in his chapter 13 case and these selfsame causes of action had been remanded to state court in May of 1996.

5. After **Appendix B** became final, jurisdiction over the August 24, 2001 money judgment against Claron vested in the United States District Court for the Southern District of Texas, pursuant to Title 28 U.S.C. § 1964. Where, petitioner filed a certified copy of the August 24, 2001 judgment and gave respondent notice of such action prior to respondent issuing **Appendix C**. Therefore, respondent had no jurisdiction to vacate the August 24, 2001 judgment where district court in Houston, Texas had jurisdiction over judgment.

6. The August 24, 2001 final money judgment became the "property" of petitioner, and by the failure of the Fifth Circuit to act, petitioner's property (August 24, 2001) has been taken from him via **Appendix D**, *without jurisdiction* and *due process* by respondent and done under the color of his office.

II. The Fifth Circuit and the United States District Court's sanctions have clearly departed from what a reasonable thinking person would consider proper under the circumstances of this case and unwarranted by both courts.

1. Both the Fifth Circuit and the District Court has viewed **Appendix B** as an order of remand and have barred your petitioner from filing in a federal court of these United States and sanctioned petitioner as well. However, nowhere in any ruling, by any court, can petitioner find that the dismissal of an appeal was in fact a disguised order of remand.

2. Congress enacted Title 28 U.S.C. § 2106 so that a reviewing court may:

> "...remand the cause and direct the entry of such appropriate judgment, decree, or order, or require such further proceedings to be had as may be just under the circumstances."

Appendix B gives no direction for respondent to follow, nor remands for further proceedings. However, for filing suit against respondent for acting without his jurisdiction to issue **Appendix D,** your petitioner has been unreasonably sanctioned by both the Fifth Circuit and District Court Judge Ronald Clark.

III. This Court must exercise is supervisory role over the lower courts.

1. The wording of **Appendix B** is not ambiguous, it is clear. Appellant Claron sought remand, the district court sitting in its appellant role under Title 28 U.S.C. § 158 construed appellant's *Motion to Remand a Bankruptcy Appeal* "...as a motion to voluntarily dismiss appeal" pursuant to Rule 8(f) of the Federal Rules of Civil Procedure. See footnote No. 1 of Appendix B.

2. Whether to remand or grant petitioner's *Motion to Dismiss Appeal* **(Appendix B, page 1)** was within the scope of Judge Heartfield's discretion sitting in his appellant role pursuant to 28 U.S.C. § 158, and by not ordering remand it must be said then that petitioner's *Motion to Dismiss Appeal* was granted.

3. For respondent to have acted within his jurisdiction to have issued **Appendix D** it was necessary for Judge Heartfield to have ordered remand pursuant to Title 28 U.S.C. § 2106/BRAP 8013, and he did not.

4. The Legislative Branch of the federal government passed Title 28 U.S.C. § 2106. This Branch makes laws and not suggestions for the Judicial Branch to follow. Therefore, Title 28 U.S.C. § 2106 must be considered a law of the United Sates.

5. The judges of the lower courts are not free to determine how they would have ruled instead of the way Judge Heartfield ruled in **Appendix B**. For, **Appendix B** has never been appealed and stands as a bar to other court's now attempting to suggest that respondent's *post-dismissal order*, **Appendix D**, "...was a judicial act, and Judge Parker was not wholly without jurisdiction to grant it." see **Appendix A, page 2**.

6. Because Title 28 U.S.C. § 2106 must be considered a **law** of the United States, then, this Legislative **law** must trump **case law** of the Judicial Branch. This view is in keeping with the Oath taken by justices and judges pursuant to Title 28 U.S.C. § 453.

7. Therefore, absent the language of Title 28 U.S.C. § 2106 injected into **Appendix B** then **Appendix D** must be considered void and a nullity. Where, **Appendix D** was issued by respondent without any jurisdiction to do so. A different view pontificated by the lower court's should in all things *shock the conscience* of this Court.

ARGUMENT

This Court in Stump v. Sparkman, 435 U.S. 349, 349-350 (1978), makes clear that a judge will be deprived of his immunity and is "...subject to liability only when he has acted in "the clear absence of all jurisdiction." The statements on page 7 above lists the reasons respondent did not have jurisdiction to have issued **Appendix D**, and therefore liable, Mireles v. Waco, 502 U.S. 9, 11-12 (1991).

Respondent was not given instruction(s) to perform further proceedings as per Title 28 U.S.C. § 2106 and/or Bank.R.App.P. 8013 as can be seen in **Appendix B**. Neither did respondent have jurisdiction over petitioner (a discharged debtor) or his property, as per this Court's ruling in, Northern Pipeline Co., v. Marathon Pipeline Co., 458 U.S. 50, 71 (1982), also see Celotex Corp. v. Edwards, 115 S.Ct. 1493, 1498 at [3,4] (1995). Nor did respondent have jurisdiction to determine aspects of the cases remanded to state court, nor heeded the notice given him of the 28 U.S.C. § 1964 filing. Respondent just ignored these jurisdictional boundaries when he signed **Appendix D**.

The August 24, 2001 money judgment was attacked by Claron during Claron's perfected appeal asserting "newly discovered evidence" for first trial. However, Claron failed to appear at the first trial to present **any evidence at all**. The hearing of Claron's Rule 60(b)(2) motion by respondent which generated **Appendix D** is *prima facie* evidence of respondent's prejudice toward petitioner. Where the Fifth Circuit's stance on such a situation is stated in bottom of footnote No. 2 in Williams v. Chater, 87 F.3d 702, 705 (5th Cir. 1996):

> "...we have repeatedly held that in order to prevail on a motion under Rule 60(b)(2) based upon newly discovered evidence, the movant must demonstrate among other things that it exercised due diligence in obtaining the information.

However, the Fifth Circuit ignored its own **precedent** here to rule in favor of respondent's granting of Claron's Rule 60(b)(2) motion, **Appendix D,** and shows prejudice toward petitioner.

The Fifth Circuit again broke **precedent** in allowing the district court sanctions to stand under its inherent powers. Where, all petitioner did was to cite case law in his suit and appeal, and the only thing that could be construed by a judge that the "very temple of justice has been defiled" see Goldin v. Bartholow 166 F.3d 710, 722-23 (5th Cir. 1999), was that petitioner sued a judge (respondent).

Again, the Fifth Circuit ignored its own **precedent** in Winchester v. United States Attorney, 68 F.3d 947 (5th Cir. 1995), in that, although Claron sought remand of its appeal, none was given, see **Appendix B**, no remand.

This Court's decision in Griggs v. Provident Consumer Discount Co., 459 U.S. 56, 58-59 (1982), controls here in that, Claron's perfected appeal divested the bankruptcy court (respondent) "...of its control over the aspects of the case involved in the appeal." However, *Griggs* did not effect the ruling(s) of the lower courts, although the doctrine of **vertical stare decisis** barred the lower courts from ignoring earlier case(s) of this Court, Hutto v. Davis, 454 U.S. 370, 376 (1982), as shown above.

Lastly, it appears that the Fifth Circuit is more interested in coming to the aid of one of its own (respondents a judge) than in keeping with its own **precedent** and gives the appearance of cronyism and not being impartial, "The Due Process Clause entitles a person to an impartial and disinterested tribunal..." see Marshall v. Jerrico, Inc., 446 U.S. 238, 242-43 (1980). Therefore, petitioner asserts that given the facts in this case and the conduct of the judges that his Fifth Amendment rights to *due process* has been violated by (1) the respondent, (2) the district court and (3) the Fifth Circuit. Further, if their ruling(s) are not reverse and vacated, how can petitioner **now** obtain *due process* when petitioner's *access to the courts* have been impeded by the lower courts? (Question No. 4, page i).

Conclusion

For these reasons, your Petitioner respectfully asks this Court to grant his writ of certiorari and order the following:

1. The Fifth Circuit to recall and reverse its mandate.

2. The Fifth Circuit reverses the district court's judgment, filing and sanction's order.
3. The Fifth Circuit to reverse its filing and monetary sanctions against petitioner.
4. That Petitioner's suit against Respondent be remanded to state court.
5. That upon remand to the state court, that respondent hire his own counsel and not use the resources of the United States for his own personal business.
6. That in the event remand to federal court be proper in the eyes of this Court, then transfer petitioner's suit to the Southern District of Texas, Houston Division.
7. That Respondent pay costs to Petitioner for the improper removal of the state court suit, including the cost of appeals/writ.
8. For further and other relief to which petitioner may be entitled, both in law and in equity.

Respectfully submitted,

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APPENDIX A	Unpublished, Decision of Fifth Circuit Case No. 04-40625
APPENDIX B	Unpublished, Order Dismissing Bankruptcy Appeal
APPENDIX C	Unpublished, Order Granting Amended Motion of Claron Corporation for Relief from Judgment Pursuant to Bankruptcy Rule 9024 following Dismissal of Appeal by District Court
APPENDIX E	Unpublished, Judgment of District Court Case No. 1:02-CV-679

FILED
February 10, 2005
Charles R. Fulbruge III
Clerk

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 04-40625
Summary Calendar

LEO ROGERS DUGAS,

Plaintiff-Appellant

versus

BILL PARKER, U.S. Bankruptcy Judge,

Defendant-Appellee,

HUGH T. ECHOLS, SR.,

Appellant.

Appeal from the United States District Court for the
Eastern District of Texas
USDC No. 1:04-CV-113-RHC

Before REAVLEY, JOLLY and HIGGINBOTHAM, Circuit Judges. PER CURIAM:

Leo Rogers Dugas filed the instant suit in state court to challenge the propriety of a bankruptcy order (the Order) issued by United States Bankruptcy Judge Bill Parker. Judge Parker removed the suit to federal court and filed a motion to dismiss it based on, inter alia, his contention that the suit was barred by absolute judicial immunity. Dugas filed a motion to remand the case to state court, and he argued that Judge Parker's lack of jurisdiction to issue the Order deprived the federal courts of jurisdiction over the instant suit. Dugas moved to remove the district judge, arguing that the district court's prior affirmance of the Order showed that it could not be impartial in the instant matter.

The district court granted Judge Parker's motion to dismiss and denied Dugas's motions for remand and recusal. The district court sua sponte issued a sanction against both Dugas and his attorney, Hugh T. Echols, Sr., after finding that they had acted in bad faith and had filed frivolous, vexatious pleadings argues that the district court erred in granting Judge Parker's motion to dismiss because Judge Parker was wholly without jurisdiction to issue the Order. This argument is frivolous. The Order was a judicial act, and Judge Parker was not wholly without jurisdiction to grant it. Judge Parker was thus entitled to absolute judicial immunity, and the district court did not err by granting his motion to dismiss. See Mireles v. Waco, 502 U.S. 9, 12-13 (1991); Ammons v. Baldwin, 705 F.2d 1445, 1447 (5th Cir. 1983).

The district court did not err in determining that it had jurisdiction that it had jurisdiction over the instant suit and denying Dugas's motion to remand. See 28 U.S.C. § 1442, The district court likewise did not err in denying Dugas's motion to recuse, as this motion was based on a prior adverse ruling, See Liteky v. United States, 510 U.S. 540, 555 (1994). Dugas's argument to the contrary are wholly lacking in merit, as are his arguments concerning the propriety of the district court's grant of Judge Parker's motion to dismiss Dugas's suit. Dugas's appeal is DISMISSED AS FRIVOLOUS to the extent he challenges the district court's dismissal of his suit and its denial of his motion to remand and for recusal. See 5th Cir. R. 42.2; Howard v. King, 707 F.2d 215, 219-20 (5th Cir. 1983).

Finally, Dugas and Echols argue that the district court erred in invoking its inherent power to sua sponte sanction them. Their argument on this issue are unavailing. The district court did not abuse its discretion in sanctioning Dugas and Echols, See Chambers v. NASCO, Inc., 501 U.S. 32, 43-46 (1991); Toon v. Wackenhut Corrections Corp., 250 F.3d 950 (5th Cir. 2001). The judgment of the district court imposing a sanction upon Dugas and Echols is AFFIRMED.

This court has previously warned Dugas that he would be sanctioned if he persisted in filing frivolous motions, suits, or appeals. Because Dugas did not heed this warning, he is ORDERED to pay a sanction in the amount of $500, payable to the Clerk of this Court. See 5th Cir. R. 3. The Clerk of this Court and the clerks of all federal district courts within this Circuit are directed to refuse to file any civil complaint or appeal by Dugas unless Dugas

submits proof of satisfaction of this sanction. If Dugas attempts to file any further notices of appeal or original proceedings in this court without such proof, the clerk will docket them for administrative purposes only. Any other submissions that do not show proof that the sanction has not been paid will neither be addressed nor acknowledged. Dugas is WARNED that filing additional frivolous motions, suits, or appeals will invite the imposition of an additional, harsher sanction.

APPEAL DISMISSED IN PART AS FRIVOLOUS; SANCTION ORDER OF THE DISTRICT COURT AFFIRMED; $500 MONRTARY SANCTION IMPOSED ON APPELLANT DUGAS; FURTHER SANCTION WARNING ISSUED.

EOD
May 30, 2002

IN THE UNITED STATED DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

CLARON CORPORATION	§	
	§	CIVIL ACTION
Appellant	§	No. 1:01-CV-681
	§	
v.	§	(TH)
	§	
LEO ROGERS DUGAS and	§	BANKRUPTCY
VALERIE DARLENE	§	ACTION
DUGAS	§	No. 94-10027
	§	
Appellees.	§	

ORDER DISMISSING BANKRUPTCY APPEAL

Before the Court is a *Motion to Remand a Bankruptcy Appeal* [Clerk's Docket No. 13] (which the Court will construe[1] as a motion to voluntarily dismiss appeal) filed by the appellant Claron Corporation on November 8, 2001. Having considered the motion and response, and having considered appellee's *Motion to Dismiss Appeal* [Clerk's Docket No.1], the Court is of the opinion that the appeal should be dismissed.

1. "All pleadings shall be so construed as to do substantial justice." Fed.R.Civ.P. 8(f).

IT IS THEREFORE ORDERED that the *Motion to Remand a Bankruptcy Appeal* [Clerk's Docket No. 13] (which the Court will construe as a motion as a motion to voluntarily dismiss appeal) is in all things **GRANTED.**

IT IS FURTHER ORDERED that Claron's Corporation's appeal from the bankruptcy court is hereby **DISMISSED.**

IT IS FURTHER ORDERED that the clerk is **DIRECTED** to close this appellate case file.

SO ORDERED.

SIGNED this the 28th day of May, 2002.

"s/_____
Thad Heartfield
US District Judge

FILED
Mar 03 1999

UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

98-40079

In The Matter Of: LEO ROGER DUGAS,

Debtor.

LEO ROGER DUGAS; VALERIE DARLENE DUGAS,
Appellants,

CLARON CORPORATION; CLAMONT ENERGY CORPORATION INC, formerly known as united States Texas Corporation Inc., formerly known as United Texas Petroleum Inc.,

Appellees.

Appeal from the United States District Court for the Eastern District of Texas (1:95-CV -1132)

Before KING, Chief Judge, and REA VLEY and BENAVIDES, Circuit Judges.

Debtors, Leo Roger Dugas and Valerie Darlene Dugas, appeal from an order of the district court affirming the bankruptcy court's denial of a disgorgement motion filed by the Dugas in their chapter 13 bankruptcy case. Unfortunately, neither of the appellees have assisted this Court by filing a brief responding to the issues raised by the Dugas on appeal. Upon consideration of the Dugas's brief and a review of the record, we reverse the district court and remand to the bankruptcy court for further proceedings.

BACKGROUND

The Dugas filed a petition for relief under chapter 13 of the Bankruptcy Code in the U.S. Bankruptcy Court for the Eastern District of Texas, Beaumont Division, on January 10, 1994. Nineteen months later, on August 22, 1995, the Dugas with the bankruptcy court. The motion alleged that one of the appellees Claron Corporation had improperly removed-funds in which the Dugas's estate held an interest from the registry of the Harris County Civil Court at Law Number 2 in Harris County, Texas. The Dugas also alleged that the other appellee, Clamont Energy Corporation, had failed in its responsibility to protect the funds. The motion requested that Claron be ordered to turn over the removed funds to the Beaumont bankruptcy court and that the bankruptcy court take control over any similar funds remaining in the state court.

The funds that were the subject of the Dugas's were related to a well-traveled and procedurally complex interpleader action that had been filed in the Harris County court in December 1992. Originally styled *Howell Crude Oil Co.* v. *JSB Petroleum, Inc.,* Cause No. 611,156, that case involved numerous parties, including Claron and the Dugas, who claimed an ownership interest in oil and gas leases located in Chambers County, Texas. During the pendency of that action, the proceeds from those leases were being deposited into the registry of the Harris County court, awaiting the court's determination of which party owned them.

The leases that were the subject of *Howell* had originally been owned by Clamont Energy Corporation but had been transferred to other parties shortly before Clamont was forced into bankruptcy in 1989. As those transfers may have constituted avoidable preferences under 11 U.S.C. § 547, however, the Clamont bankruptcy estate still held a potential claim to the leases when *Howell* was commenced. Based upon the Clamont estate's interest, one of the *Howell* defendants removed the case in May 1993 to the U.S. Bankruptcy Court for the Southern District of Texas, Houston Division. There, it was docketed as adversary proceeding number 93-4250 under the Clamont bankruptcy case.

Despite the Clamont estate's interest in the oil and gas leases, it had never been named as party to *Howell.* Therefore, in June 1993, Jason Searcy, the trustee for the Clamont bankruptcy estate, filed a complaint in the Beaumont bankruptcy court seeking to have all of Clamont's oil and gas lease transfers canceled, and the accumulated proceeds turned over the estate. Styled *Searcy* v. *J.S.B. Petroleum, Inc.,* that case was also docketed under the Clamont bankruptcy case, as adversary proceeding number 93-10315.

The Clamont estate's interest in *Howell* and *Searcy* was short-lived. In December 1993, Jason Searcy entered into settlement agreement with Claron through which Claron received all of the interest held by the Clamont estate in any of the disputed oil leases and the interplead funds. In exchange, Claron paid the estate $18,750. In February 1994, *Howell* was transferred to the Beaumont bankruptcy court and consolidated into *Searcy.* One day later, the court approved the settlement agreement in *Searcy,* thereby extinguishing all of the Clamont estate's remaining interest in both cases.

Although the settlement agreement ceded all of the Clamont estate's interest in the disputed leases and funds to Claron, it did not purport to resolve what interest Claron then held vis-à-vis the Dugas or any of the other original parties in *Howell.* In fact, because there still remained unresolved state law issues concerning the ownership over the leases and interplead funds, the Beaumont bankruptcy court, in May 1996, entered an order remanding *Searcy* to the Harris County court where *Howell* had begun four years previous.

The Dugas's disgorgement motion that is the subject of this case concerns the interplead oil and gas lease proceeds that were supposed to follow Howell, and then Searcy, as it shuftled through the string of state and federal courts. When Howell was removed to the Houston bankruptcy court in May 1993, all of the interplead oil and gas lease proceeds being held by the Harris County court, then totaling $25,866.85, were transferred from the registry of the Harris County court to the registry of the Houston bankruptcy court. Those funds, supplemented by other proceeds as they arose, traveled with the case and were eventually transferred back to the registry of the Harris County court in May 1996 after the order of

remand. Thus, from May 1993 when the case was removed until May 1996 when it was remanded, no more proceeds nom the disputed leases should have been deposited into the registry of the Harris County court as the entire case was closed at the state level. The Harris County court's docket sheet reveals, however, that two deposits were made into its registry during that period. Both of those payments, one for $13,278.89 on June 3, 1993, and the other for $23,716.43 on August 31, 1993, were made by Statewide Crude, a company that had purchased oil under the disputed leases. Thus, a portion of the interplead funds traveled with the case in the federal bankruptcy courts while another portion improperly remained in the state court registry.

Among the evidence presented to the bankruptcy court by the Dugas' were copies of a court order and a payment authorization nom the Harris County court that indicate that Claron received part of the mistakenly deposited Statewide Crude funds nom the Harris County court in October 1994. The order, docketed under Howell's original state case number, 611,156, stated that it was "on the motion of Claron Corporation" and directed by the clerk of the Harris County court to pay Claron "$23,716.43 with accrued interest, held in the registry of the court." In describing the basis for this release of funds, the order found:

> The funds held in the Registry of the County Civil Court at Law No.1 are the property of Claron Corporation through the compromise and settlement agreement in Adversary Action under Case No.93-4250 [the Howell adversary proceeding] and the subsequent Trustee's Assignment of all of Clamont Energy

> Corporation's interest in and to Adversary Case No.93-4250 and any funds on deposit in the Registry of the Court in Adversary No.934250 and all related cases to Claron Corporation, Assignee.

The payment authorization indicates that a check for $24,658.33, which was the $23,716.43 with accrued interest, was issued to Claron by the registry of the Harris County court on October 14, 1994.

Although it was this removal of funds that formed the basis of the Dugas' disgorgement motion, that was not apparent on its face. In the motion, the Dugas asserted that a portion of their estate "consists of an interest in case # 611,156 and described that case's removal and docketing under the Clamont adversary proceedings. It then alleged that "Claron Corporation removed $24,658.33 . . . under adversary 93-1031." Finally, it requested that the "court order Claron Corporation to disgorge the $24,658 plus accrued interest back into adversary 93-1031 . . . [and] ask[ed] the court to transfer remaining funds in Harris County to the registry of the court in Tyler, Texas under adversary 93-1031." Nowhere in their motion, however, do the Dugas indicate that the funds which they were concerned had been mistakenly deposited in the closed state proceeding.

During a short hearing, the bankruptcy court attempted to elicit a coherent description of the basis for the Dugas's motion. Although Mr. Dugas, representing himself pro se, was unsuccessful in concisely explaining his argument, he did manage to enter thirteen exhibits into evidence, including the Harris County court documents described above. Shortly after the hearing, the court denied the motion in a one sentence order that found the Dugas had "totally failed to produce any evidence in support of the Motion."

On appeal of the bankruptcy court's order denying the disgorgement motion, the district court affirmed the bankruptcy court's ruling, but on different grounds. It found that, even if the Dugas had a basis for their motion, it was improper for them to have filed it in their personal chapter 13 bankruptcy case. According to the district court, the only place that the Dugas could have filed their disgorgement motion was in the *Searcy* adversary proceeding under the rights associated with the settlement agreement could litigated with notice to all interested parties.

The Dugas timely appealed the district court's decision.

DISCUSSION

In reviewing a bankruptcy court's findings of fact and conclusions of law, we apply the same standard of review as the district court. *See Compuadd Corp.* v. *Texas Instruments Inc. (In re Compuadd Corp),* 137 F.3d 880, 881 (5th Cir. 1998). Finding of fact are reviewed for clear error and conclusions of law are reviewed de novo. *See id*

We discern from the district court's silence as to the bankruptcy court's only asserted reason for denying the Dugas's disgorgement motion-that the Dugas "totally failed to produce in support of the motion" -at least a doubt, if not a rejection, of the basis for the bankruptcy court's ruling. It is clear to us that the Dugas did present the bankruptcy court with evidence relating to Claron's removal of funds from the registry of the Harris County court. Furthermore, based upon the facts that the case was closed at the state level when the removal occurred, and that the basis for the removal was a settlement agreement that did not purport to provide Claron with undisputed

rights to the funds removed, Claron's removal of the funds was ostensibly improper. Although it is possible that this evidence was not sufficient for the Dugas to have ultimately succeeded in forcing Claron to Disgorge the funds it received it nonetheless did support their motion. The bankruptcy court's finding that the Dugas failed to produce any evidence was erroneous.

Neither do we agree with the district court's conclusion that the bankruptcy court's order can be affirmed on other grounds. Although it may well have been more efficient for the Dugas to have made their disgorgement motion in the *Howell* and *Searcy* adversary proceedings, we find, contrary to the district court's decision, that it was also permissible for the motion to have been made in their personal chapter 13 case.

Under the Bankruptcy Code's automatic stay provision, 11 U.S.C. § 362(a), Claron was prohibited from commencing, continuing, or taking any action to obtain or impair any property of the Dugas's estate during the pendency of their chapter 13 case. To the extent that Claron's removal of the funds from Harris County court illegally impaired the Dugas's interest to the same funds, that removal may have constituted a violation of the § 362(a) stay provisions. Moreover, the Dugas had standing to bring an action for stay violations. *See* 11 *U.S.C.* § *362(h) Pettit* v. *Baker,* 876 F2d 456,457-58 (5th Cir. 1989) (finding that § 362(h) provides a remedy for an individual injured by a willful violation of a § 362(a) stay). Thus, because the Dugas's disgorgement motion constitutes an action against Claron for violating the stay, it was properly brought before the bankruptcy court in their chapter 13 case.

The district court specifically rejected the Dugas's argument on appeal that their motion was a valid claim that Claron had violated the Dugas's chapter 13 stay. First, it found that this argument was not before it as it had not been properly raised in the bankruptcy court. Second, the district court found that even if it had been raised, the Dugas's argument lacked merit because the automatic stay does not operate against proceedings in the court which has jurisdiction over the bankrupt.

We find both of the district court's reasons rejecting the Dugas's argument unavailing. As to the first reason, we find that the Dugas did make this argument to the bankruptcy court and the district court should have found the argument properly raised. In the Dugas's motion to the bankruptcy court, they assert that "a portion of the debtors' estate consists of an interest in" the removed *Howell* case. They also listed the funds that had been interplead into that case and the funds that Claron had removed. Although the motion did not layout with specificity the Dugas statutory basis for seeking disgorgement of the funds removed by Claron, we find that a suit seeking relief from acts that impair the property of a bankruptcy estate is presumptively an action to enforce the automatic stay. On that basis, the Dugas's automatic stay argument was made to the bankruptcy court and thus was properly before the district court on appeal.

We also find unconvincing the district court's second argument, that Claron was not stayed from removing the funds held by the Harris County court

because § 362(a) does not stay other proceedings in the same court that has jurisdiction over the bankrupt. While this Court has never considered whether proceedings before the court which has jurisdiction over the bankrupt are exempted from the ambit of the automatic stay, even if we were to join the courts from outside this circuit which have so held, it would not effect our decision in this case. All of the decisions-cited by the district court merely state that the stay does not operate against the *court* where the bankruptcy case is pending. *See, e.g., Civic Center Square, Inc.* v. *Ford (In re Roxford Foods, Inc.),* 12 F.3d 875, 878 (9th Cir. 1993) ("[t]he stay does not operate against the court with jurisdiction over the bankrupt'. *(quoting Teerlink* v. *Lambert (In re Teerlink Ranch Ltd),* 886 F.2d 1233, 1237 (9th Cir. 1989»); *In* re *Redburn,* 193 B.R. 249, 260 n.17 (W.D .Mich. 1996) (citing cases for the proposition that "the creditor is not prohibited (by the automatic stay] from commencing or continuing actions in the bankruptcy court in which the bankruptcy is pending"). Here, the issue was whether the stay was violated when the Harris County court, a court unconnected to the bankruptcy court where the Dugas's case was pending, released funds to Claron. That the state court professed to release those funds on the basis of terms in a settlement agreement approved by the same bankruptcy court with jurisdiction over the Dugas does not exempt the state court or Claron from the reaches of

the stay in the Dugas's bankruptcy case. We are moreover troubled that these funds were released to Claron given that neither the settlement agreement nor any other determination of the bankruptcy court appeared to extinguish or resolve the Dugas's claimed interest to the same funds.

We thus find that it was an error for the bankruptcy court motion to have failed to reach the merits of the Dugas's disgorgement motion. We remand to the bankruptcy court for further proceedings consistent with this decision.

REVERSED AND REMANDED

EOD
AUG 27 2002

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE EASTERN OF TEXAS BEAUMONT
DIVISION

INRE:
LEO ROGERS DUGAS and §
VALERIE DARLENE DUGAS § Case No. 94-10027
§
Debtors § Chapter 13

ORDER GRANTING AMENDED MOTION OF CLARON CORPORATION FOR RELIEF FROM JUDGMENT PURSUANT TO BANKRUPTCY RULE 9024 FOLLOWING DISMISSAL OF APPEAL BY DISTRICT COURT

ON THS DATE the Court reviewed the file in the above-referenced case. The Court finds that on October 24, 2001, this Court conducted a hearing upon the "Amended Motion of Claron Corporation for Relief nom Judgment Pursuant to Bankruptcy Rule 9024" (the "Rule 60(b) Motion") filed by the Claron Corporation. Because that motion was brought subsequent to the filing of a notice of appeal by the Claron Corporation of that certain "Final Order Granting in Part and Denying in Part Debtor's Motion to Disgorge and Transfer of Funds Into the Registry of the Court and Awarding Damages for Willful Violations of the Automatic Stay" (the "Sanctions Order") entered by this Court in the above-referenced case on August 24, 2001, the Court conducted the hearing on the Rule 60(b) motion pursuant to the authority and

procedure outlined in *Winchester* v. *United States Attorney,* 68 F.3d 947 (5th Cir. 1995) and *In re Fraser, 98* F.Supp.2d 788 (B.D. Tex. 2000) which affirms the jurisdiction of a trial court, notwithstanding the prior filing of a notice of appeal, to conduct a hearing and *deny* a subsequent Rule 60(b) motion, it is necessary to obtain leave of the appellate court and, without the granting of such leave, usually through the remand of the action, the trial court is without jurisdiction to grant the motion. Accordingly this Court entered on October 25, 2001, a "Notice of Intent to Grant Upon Remand Amended Motion of Claron Corporation for Relief from Judgment Pursuant to Bankruptcy Rule 9024" (the "Notice of Intent") which provided that "an order granting the Motion [for Relief from Judgment] shall be entered by this Court upon notice of the remand of the appeal regarding the Sanctions Order by the United States District Court for the Eastern District of Texas to this Court or upon the granting of such other leave as the appellate court may find appropriate."

This Court finds that, on July 8, 2002, the United States District Court transmitted to this Court an "Order Dismissing a Bankruptcy Appeal" which now authorizes this Court to proceed to grant the Rule 60(b) motion as indicated by the Notice of Intent. Accordingly, based upon the Notice of Intent issued upon due consideration of the evidence admitted at the hearing conducted on October 24, 2002, the Court finds that just cause exists for the entry of the following order.

IT IS THEREFORE ORDERED that the "Amended Motion of Claron Corporation for Relief from Judgment Pursuant to Bankruptcy Rule 9024" filed by the Claron Corporation is hereby **GRANTED** and that certain "Final Order Granting in Part and Denying in Part Debtor's Motion to Disgorge and Transfer of Funds Into the Registry of the Court and Awarding Damages for Willful Violations of the Automatic Stay", entered by this Court in the above referenced case on August 24, 2001, is hereby **VACATED.**

IT IS FURTHER ORDERED that the "Motion to Disgorge and Transfer Funds into the Registry of the Court" filed by the discharged Debtor, Leo Rogers Dugas, shall be reset for further hearing under the Court's procedures with notice to all affected parties.

DATED AUG 22, 2002.

"s/_____"
BILL PARKER
US BANKRUPTCY JUDGE

EOD
JUL 28 2003

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION

LEO AND VALERIE DUGAS	§	Case No.1:02-cv-679
	§	
Appellants,	§	Appeal from
	§	Bankruptcy Case
CLARON CORPORATION, INC.	§	No. 94-10027
	§	
Appellee.	§	Judge Ron Clark

JUDGMENT

This case came before the Court, Honorable Ron Clark, District Judge, presiding, on appeal from the United States Bankruptcy Court for the Eastern District of Texas, Honorable Bill Parker, Bankruptcy Judge, presiding. The Court, having duly considered the issues and arguments presented, and a decision having been duly rendered, it is:

ORDERED and **ADJUDGED** that The Bankruptcy Court's "Order Granting Amended Motion Of Claron Corporation For Relief From Judgment Pursuant To Bankruptcy Rule 9024 Following Dismissal Of Appeal By District Court," [Docket. #220] is AFFIRMED, and the matter is remanded to the Bankruptcy Court for further proceedings.

SIGNED this 27th day of July, 2003.

"s/_____"
Ron Clark
US District Judge

(2)

Supreme Court, U.S.
FILED
05-34 APR 25 2005
OFFICE OF THE CLERK

No.

IN THE

SUPREME COURT of the UNITED STATES

LEO ROGERS DUGAS

Petitioner

V.

BILL PARKER

Respondent

On Petition for Writ of Certiorari
To The United States Court of Appeals
For the Fifth Circuit

Supplement to Appendices

Leo Rogers Dugas, pro se
15311 Hummingbird Lane
Baytown, TX 77520
Tel. (281) 385-2319

INDEX TO APPENDICES

PREFACE	Reasons for additions of Appendix G and Appendix H
APPENDIX G	Unpublished order from the U.S. District Court dated April 14, 2004
APPENDIX H	Unpublished opinion and orders of the U.S. District Court dated April 14, 2004

PREFACE

On May 3, 2005, Clerk Jeffery Atkins, returned to me 39 copies of my Petition for Writ of Certiorari and instructions to supplement my Appendices. Believing these orders void *as a matter of law,* I was awaiting for the Record from the Fifth Circuit to be sent to this Court.

As stated by Judge Clark in Appendix H page 2, that "Claron Corporation did not show up to the hearing..." which generated the August 24, 2001 judgment against Claron and that "Claron Corporation appealed..." the August 24, 2001 order to "...Judge Heartfield...".

Therefore, Claron Corporation having **failed to appear** at the hearing, left no error for Claron Corporation to have appealed. Next, the statutory scheme of Title 28 U.S.C. § 158(a) which Claron Corporation invoked by appealing to the District Court, mandates that Claron Corporation appeal to the Fifth Circuit pursuant to 28 U.S.C. § 158(d) after the District Court **dismissed** Claron Corporation's appeal, see Appendix B, pages 1 and 2, and Claron Corporation did not appeal.

Judge Clark's unfounded assertion that Appendix B, **Order Dismissing Bankruptcy Appeal**, is in fact an order of remand, is clearly his attempt to falsely misstate the facts of this case so to build **his own assertions** in Appendix G and H. This is why I state that Appendix G and H are a nullity.

FILED
2004 April 14
TX Eastern-Beaumont

UNITED STATES DISTRICT COURT
EASTERN DISTRICT TEXAS
BEAUMONT DIVISION

LEO ROGERS DUGAS	:	
Plaintiff,	:	
	:	CASE NO. 1:04-CV-113
V.	:	
	:	
BILL PARKER	:	JUDGE RON CLARK
Defendant.	:	

JUDGMENT

This judgment is entered pursuant to Fed.R.Civ.P. 58 and the Court's memorandum and order, denying Plaintiff's Motion for Recusal, denying Plaintiff's Motion for Remand, and granting Defendant's Motion to Dismiss. Is concurrently signed and filed with this judgment.

IT IS ORDERED that Plaintiff, LEO ROGERS DUGAS, take nothing from his claims against Defendant Parker.

IT IS ORDERED, that Plaintiff shall pay all costs of court.

SIGNED this 13th day of April, 2004.

"s/_____"
Ron Clark
US District Judge

Appendix G

FILED
2004 April 14
TX Eastern-Beaumont

UNITED STATES DISTRICT COURT
EASTERN DISTRICT TEXAS
BEAUMONT DIVISION

LEO ROGERS DUGAS	:	
Plaintiff,	:	
	:	CASE NO. 1:04-CV-113
V.	:	
	:	
BILL PARKER	:	JUDGE RON CLARK
Defendant.	:	

ORDER ON PLAINTIFF'S MOTION FOR RECUSAL.
PLAINTIFF'S MOTION FOR REMAND AND
DEFENDANT'S MOTION TO DISMISS

Before the Court are Plaintiff's Motion for Recusal [Doc. #9], Plaintiff's Motion for Remand [Doc. #4], Plaintiffs Motion to Grant Unopposed Motion to Remand [Doc. #7], and Defendant's Motion to Dismiss [Doc.#2]. Because these motions have no factual basis nor any legal foundation they will be denied.

Background

The dispute underlying this case began in 1994 when Plaintiff filed a Chapter 13 bankruptcy action in the Bankruptcy Court of the Eastern District of Texas the Eastern District of Texas. *See* case no. 94-10027, selected docket sheet docket sheet available by password access at

www.txeb.uscourts.gov.[1] During the course of the Chapter 13 bankruptcy in 1995, Plaintiff moved to transfer certain oil and gas production proceeds from the registry of the County Civil Court at Law #1 of Harris County, Texas to the registry of this Court and Plaintiff sought monetary damages against Claron Corporation. *See* Doc. #46 in Cause No. 94-10027. Judge Sharp, the United States Bankruptcy Court Judge at the time, denied the motion because Plaintiff had shown no evidence that he was entitled to relief. Plaintiff appealed the order. Two years later, the appellate court reversed Judge Sharp's order and Judge Parker set the motion for a new hearing. Claron Corporation did not show up to the hearing and Judge Parker entered an order that granted Plaintiff certain damages against Claron Corporation on August 24, 2001.

Claron Corporation appealed the order to Judge Heartfield of the Eastern District on September 4, 2001. Claron Corporation also sought a relief from judgment from Judge Parker while its appeal was pending. *See* Doc.# 188 of case no. 94-10027. Judge Parker held a hearing on Claron Corporation's motion for relief. During the hearing, it was revealed that Plaintiff did not even own the oil and gas production rights that formed the basis for his claim for proceeds. Judge Parker, knowing that he did not have concurrent jurisdiction with the appellant court, did not enter judgment reversing his August 24, 2001 decision until after the District Court granted Claron's Corporation's motion to remand on May 30, 2002. *See* Def.'s Mot. To Dismiss, Ex. C. On August 27, 2002, Judge Parker reversed his August 24, 2001 order and granted relief to Claron Corporation. *See* Def.'s Mot. To Dismiss, Ex. D.

[1] For a more complete description of the procedural background in the Bankruptcy Court and on appeal see "Memorandum of Decision" signed by the Honorable Bill Parker on August 15, 2001 [Doc. #162 in Cause No. 9610027] and the opinion of the Fifth Circuit Court of Appeals filed March 3, 1999 in Cause No. 98-40079

Since Judge Parker entered his August 27, 2002 order, Plaintiff has been appealing Judge Parker's decision both to this Court and to the Fifth Circuit Court of Appeals. Plaintiff was unsuccessful in the vertical challenges of the order and has now resorted to a collateral attack on Parker's order in state court. Now, approximately ten years after Plaintiffs initial contact with the Bankruptcy Court, Plaintiff's state court attack on Judge Parker's August 27, 2002 order serves as the basis for this new cause number.

LAW AND DISCUSSION

Recusal

Plaintiff Leo Rogers Dugas, proceeding with the help of attorney Hugh T. Echols, Sr. (Bar # 06395000), has moved for recusal and disqualification of the district judge pursuant to 28 D.S.C. § 455(a). Plaintiff alleges that the undersigned district judge is barred from presiding over this case after an overly creative reading of *U.S. v. Anderson,* 160 F.3d 231 (5th Cir. 1998). Title 28 D.S.C. § 455 requires a federal judge to disqualify himself any proceeding in which his impartiality might reasonably be questioned. *See* 28 D.S.C. § 455(a). Disqualification is appropriate if a reasonable person, with knowledge of all the circumstances, would question the court's impartiality. *United States v. Anderson,* 160 F.3d 231,233 (5th Cir. 1998).

Title 28 D.S.C. § 144 allows a party to make and file, as an attachment to a motion for recusal, "a timely and sufficient affidavit that the judge before whom the matter is pending has a personal bias or prejudice either against him or in favor of any adverse party. . .." *See* 28 D.S.C." § 144. An affidavit is legally sufficient if: (1) the facts are material and stated with particularity; (2) the facts, if true, would convince a reasonable person that bias exists; and (3) the facts show that the bias is personal in nature. *United States v. Merkt,* 794 F.2d 950, 960 (5th Cir. 1986), *cert. denied,*

Merkt v. United States, 480 D.S. 946 (1987) at n. 9. Absent surrounding comments or accompanying opinion, judicial rulings alone will rarely constitute a valid basis for a motion to recuse or disqualify. *Litekyv. United States,* 510 D.S. 540, 555 (1994); *Andrade v. Chojnacki,* 338 F.3d 448, 455 (5th Cir. 2003). Plaintiffs motion to recuse is not legally sufficient as to Judge Clark. The facts alleged in support of the motion are not material nor are they stated with particularity. Plaintiff alleges in his that Judge Clark failed to "adhere to binding precedent," is in "a position to come to the aid of Judge Parker," and "that stinks." Plaintiff further states in his affidavit that a "reasonable person" was told about the situation and proclaimed, "How can this be ... and why didn't the judge step down!" *See* PI.' s Aff. This affidavit is woefully inadequate to support a motion for recusal. First, the affidavit complains of Judge Clark's judicial ruling in a prior case. Second, there are no facts *set* forth to establish that an objective observer would question the impartiality of the Judge.

Plaintiffs affidavit is legally insufficient to require the recusal of Judge Clark, and the Motion for Recusal [Doc. #9] will be denied. Plaintiffs counsel, first licensed on September 20, 1971, should have known the requirements for an affidavit supporting a Motion for Recusal before filing this patently inadequate document before this Court. The Court finds that this motion was submitted for the sole purpose of harassing the opposing party and this Court.

Remand

This is a Court of limited jurisdiction and may hear a case only when jurisdiction is both authorized by the United States Constitution and confirmed by statute. *Owen Equip. Co.* v. *Kroger,* 437 U.S. 365 (1978). The statute governing removal of acti0ns from state court, 28 U.S.C. § 1441, allows removal to federal court of cases in which there is federal question jurisdiction or diversity

jurisdiction. The removing party bears the burden of showing that federal jurisdiction exists and that removal was proper. *Manguno* v. *Prudential Prop. & Cas. Ins. Co.,* 276 F.3d 720, 723 (5th Cir. 2002). Any doubts are construed against removal because the removal statute should be strictly construed in favor of remand. *Id.; Acuna* v. *Brown & Root, Inc.,* 200 F.3d 335,339 (5th Cir. 2000).

Here, the Defendant is the Honorable Bill Parker, United States Bankruptcy Judge. He on the basis of 28 D.S.C. § 1441, 28 D.S.C. § 1442, or in the alternative 28 D.S.C. § 2679(d). The Court finds these federal statutes controlling in this case, where Plaintiff has sued a United States Bankruptcy Judge in state court complaining of a ruling the judge made in his own court. Defendant has carried his burden of showing that federal jurisdiction exists.

The Plaintiff states no material facts, logical argument, or controlling authority to support his motion for remand. Plaintiff does not dispute that: 1. Judge Parker is a United States Bankruptcy Judge; 2. he based his claims on an order entered by the Judge in Bankruptcy Court; and 3. he does not contradict the certification by the United States Attorney on behalf of the Attorney General pursuant to 28 U.S.C. § 2679. Accordingly, any alleged state law claim is properly before this Court. *See* 28 U.S.C. §2679. Of course, any claim under the United States Constitution or Federal Statute is properly removed under federal question jurisdiction. *See* 28 D.S.C. §§ 1441, 1442.

Plaintiff's Motion to Grant Unopposed Motion to Remand and Request for Cost [Doc. #8] is based on a complete misinterpretation of the facts and the Eastern District local rule regarding motion practice. *See* Local Rule CV-7(e). In Plaintiffs Motion to Grant Unopposed Motion to Remand and Request for Cost [Doc. #8] Plaintiff states that, "Defendant filed his Opposition to Plaintiff s Motion to Remand, being some

15 days after Plaintiff s Motion to Remand and therefore untimely." This apparently serves as Plaintiffs basis to state that his Motion to Remand is unopposed. Plaintiff, and Plaintiffs counsel Hugh T. Echols, Sr. are evidently having much difficulty reading and understanding the Eastern District of Texas' Local Rules. Specifically, Local Rule 7(e) states, "Time to File Response. A party opposing a motion has 15 days from the date the motion was served in which to serve and file a response and any supporting documents, ..." (emphasis added). Plaintiff has not even raised a hint of a doubt regarding federal jurisdiction to Remand [Doc. #4] or his entirely false Motion to Grant Unopposed Motion to Remand [Doc. # 8]. Both these filings are patently frivolous, an abuse of the judicial process, and are denied.

Dismissal

FED. R. CIV. P. 12(b)(6) provides that a party may move a Court to dismiss an action for "failure to state a claim upon which relief can be granted." On motion under FED.R. CIV.P. 12(b) (6), the court must decide whether the facts alleged, if true, would entitle the plaintiff to some legal remedy. *Conley* v. *Gibson,* 355 U.S. 41, 45-46 (1957). The Court must accept as true all material allegations in the complaint as well as any reasonable inferences to be drawn from them. *Kaiser Aluminum & Chem. Sales, Inc.* v. *Avondale Shipyards, Inc.,* 677 F.2d 1045, 1050 (5th Cir. 1982). The well-pleaded facts must be reviewed in the light most favorable to the plaintiff. *Piotrowski* v. *City of Houston,* 51 F.3d 512, 514 (5th Cir. 1995). A plaintiff, however, must allege specific facts, not conclusory allegations. *Elliott* v. *Foufas,* 867 F.2d 877, 881 (5th Cir. 1989). Compulsory allegations and unwarranted deductions of facts are not accepted as true. *Guidry* v. *Bankof LaPlace,* 954 F.2d 278, 281 (5th Cir. 1992).

A pleading "need not specify in exact detail every possible theory of recovery--it must only 'give the defendant fair notice of what the plaintiffs claim is and the grounds upon which it rests.'" *Thrift* v. *Estate of Hubbard,* 44 F.3d 348,356 (5th Cir. *1995) (quoting Conley,* 355 U.S. at 47). "[A] complaint should not be dismissed for failure to state plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley,* 355 U.S. at 45-46; *Kaiser Aluminum,* 677 F.2d at 1050. "'The motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.'" *ld. (quoting* 5A CHARLES A. WRIGHT & ARTHUR R. MILLER, FEDERAL PRACTICE AND PROCEDURE §§ 1357 (1969)) a claim unless it appears, beyond doubt, that the considering whether a Plaintiff has a claim against a United States Bankruptcy Judge, this Court should first determine whether the Plaintiff has complied with a heightened pleading standard required to bring suit against a federal public official. *See Sehultea v. Wood,* 47 F.3d 1427 (5th Cir. *1995) (en bane).* Here, Plaintiff has failed to establish any facts. much less a statement of facts that would satisfy a heightened pleading standard, in his state court petition that would entitle him to relief against Judge Parker or the United States. There is no authority for the proposition that a Bankruptcy Judge can be sued in state or federal court for routine orders or judgments entered as part of a bankruptcy case. To the contrary, Judge Parker is protected by judicial immunity when such an exemption is justified by overriding considerations of public policy, as it is in this case. *See Forrester v. White,* 484 U.S. 219 (1988); *Pierson v. Ray,* 386 U.S. 547 (1967). Plaintiff's claims against him in state court can be seen as nothing but bad tempered and ill-advised harassment. Given Plaintiff's inability to set forth facts to support a cause of action against Defendant, Defendant's Motion to Dismiss [Dec. #2] is granted.

Sanctions

The facts central to this dispute have been litigated since approximately 1994. The Plaintiff has had opportunities to raise legitimate issues of law in the Federal Bankruptcy Court, the Federal District Court in the Eastern District of Texas, and the Fifth Circuit Court of Appeals. It is clear to this Court that Plaintiff's new state court action against Defendant Bill Parker is an extension of Plaintiff's approximate ten year career case that is wholly without merit as are his motions to and to recuse. The Plaintiff's litigation history illustrates his mistaken belief that the federal courts exist to provide for a forum to continue years of frivolous litigation. Plaintiff's litigation practice has now deteriorated to impertinent name calling and unjustified attacks on the integrity of the Bankruptcy Court. This Court cannot continue to turn a blind eye to the behavior of Plaintiff and his counsel.

Additionally, the Court takes notice that when Plaintiffs counsel, Hugh T. Echols, Sr., Plaintiff s state court petition, Plaintiff s Motion to Remand, Plaintiff s Motion to Grant Unopposed Motion to Remand, and Plaintiffs Motion for Recusal he violated the Texas Disciplinary Rules of Professional Conduct. Under Rule 3.01 of the Texas Disciplinary Rules of Professional Conduct, "[a] lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless the lawyer reasonably believes that there is a basis for doing so .that is not frivolous." TEX. DISCIPLINARY R. PROF'L CONDUCT 3.01. Plaintiff's counsel also failed to uphold his duties under the local rules of the Eastern District of Texas. Specifically, Local Rule AT – 3 states, "Attorneys who appear in civil and criminal appear in civil and criminal cases in this court shall comply with the following standards of practice in this district: (A) In fulfilling his or her primary duty to the client, a lawyer must be ever concise of the broader duty to the judicial system that serves both attorney and client. ... " *See* Local

Rule AT-3. The motions filed by Plaintiffs counsel were so obviously an abuse of the judicial process that Plaintiff's counsel was under an obligation to this Court and the State of Texas to refrain from filing the frivolous and legally baseless documents.

The Court has the inherent power to impose sanctions as articulated in *Toon v. Wackenhut Corrections Corp.,* 250 F.3d 950 (5th Cir. 2001). The Court finds that both Plaintiff and Plaintiffs counsel have exemplified bad faith in pursuing this present cause of action. *See Goldin v. Bartholow,* 166 F.3d 710, 722 (5th Cir. 1999). The claims alleged in Plaintiffs state court petition, Plaintiff's Motion to Remand, Plaintiffs Motion to Grant Unopposed Motion to Remand, and Plaintiff's Motion for Recusal are so obviously factually and legally baseless that the Court finds they are collectively an illustration of bad faith. Therefore, the Court is justified in exercising its inherent powers to sanction both the Plaintiff and his counsel.[2]

There is no constitutional right of access to the courts to prosecute an action that is frivolous, malicious, or pursued for the sole purpose of harassing another. *Villar* v. *Crowley Maritime Corp.,* 90 F.2d 1489, 1499 (5th Cir. 1993). As a general matter, the Court is authorized to enjoin further filings without leave of Court when necessary to deter vexatious filings that are merely a flagrant abuse of the judicial process. *Kaminetzky* v. *Frost National Bank of Houston, et. al.,* 881 F.Supp. 276,277 (S.D. Tex 1995). The Supreme Court of the United States' has recognized that courts may take injunctive action to prevent frivolous filings. *See generally In re McDonald,* 489 U.S. 180 (1989). This Court finds the filings of the Plaintiff and his counsel in this matter to be vexatious filings that the flagrant abuse

2. Given the conduct of Plaintiffs counsel, the Court believes that a show cause hearing would be ineffective and a waste of judicial resources.

of judicial process and deserving of sanctions. The Court recognizes that the resources of the federal court system and federal government should and must be protected from this type of abuse and waste. Thus, as a sanction, Plaintiff Leo Rogers Dugas and Plaintiff's counsel, Hugh T. Echols, Sr. shall be required to pay, jointly and severally, sanctions in the amount of Two Hundred and Fifty and no/1 00 Dollars ($250.00),[3] to be payable within thirty (30) days of this judgment to the Clerk, United States District Court, Beaumont Division for deposit into the Treasury of the United States in accordance with 28 U.S.C. § 751. Plaintiff and his counsel shall also be enjoined from filing any further action, complaint, or motion in the United States District Court of the Eastern District of Texas without first paying the sanctions ordered, and obtaining leave from the Chief Judge of the United States District Court of the Eastern District of Texas.

CONCLUSION

IT IS THEREFORE ORDERED THAT
Plaintiff's Motion for Recusal of District Judge Ron Clark [Doc. #9] is DENIED.
Plaintiff's Motion to Remand [Doc. #4] is DENIED.
Plaintiff's Motion to Grant the Unopposed Motion to Remand [Doc. #8] is DENIED.
Defendant's Motion to Dismiss [Doc. #2] is GRANTED.

3. Plaintiff asks the Court to take judicial notice of the nominal costs for defending a removal action and suggests to the Court that $1,200.00 is reasonable. *See* Pl.'s Mot. to Grant Unopposed Mot. to Remand and Request for Cost [Doc. #8]. Plaintiff and his counsel are hardly in a position to complain about the $250.00 sanction ordered given their position in Doc. #8.

The Court FURTHER ORDERS the following sanctions:

1.) Plaintiff Leo Roger Dugas and Plaintiff's counsel Hugh T. Echols, Sr. are ordered to pay, jointly and severally, $250 to the Clerk, United States District Court, Beaumont Division no later than May 14, 2004;

2.) That Plaintiff Leo Rogers Dugas and Plaintiffs counsel Hugh T. Echols, Sr. are hereby ENJOINED from filing any further action or complaint in the United States District Court of the Eastern District of Texas without first paying the sanctions ordered, and obtaining leave from the Chief Judge of the United States District Court of the Eastern District of Texas; and

3.) Any new complaint or action which Leo Roger Dugas or Hugh T. Echols, Sr., wish to file in the United States District Court for the Eastern District of Texas shall be accompanied by a Motion for Leave to File and it shall not be docketed until the Motion for Leave to File is granted by the Chief Judge.

SO ORDERED.

SIGNED this 13th of April, 2004.

"s/_____"
Ron Clark
US District Court Judge